

Kesatuan Pekerja-Pekerja Perkayuan v Sykt Jengka Sdn Bhd

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO W-04-24-95

GOPAL SRI RAM, NH CHAN AND MOKHTAR SIDIN JJCA
17 OCTOBER 1996

Labour Law — Employment — Collective agreement — Construction — Agreement entered into by employer and trade union — Approach to adopt — Whether ordinary rules of construction applicable in determining contractual intention relevant — Whether to adopt reasonable and pragmatic approach — Industrial Relations Act 1967 s 30(5)

The appellant was a registered trade union whose members were engaged in the timber industry ('the trade union'). The respondent was a private limited company that employed a number of the trade union's members ('the employer'). In 1985, the trade union and the employer entered into a collective agreement ('the collective agreement'). Pursuant to art 38(95), it was provided that the collective agreement 'shall remain in force for a period of three years from 1 January 1985 and continue to be in force unless terminated by three months' notice in writing given by either party to the other party ...'. Article 38(96) further stated that the collective agreement shall, however, 'continue to be in force until a new collective agreement comes into effect even after expiry of this period'. On 15 October 1987, the trade union wrote to the employer, drawing the latter's attention to the fact that the collective agreement was scheduled to expire on 31 December 1987, and forwarding proposals for a fresh agreement. The employer did not reply, but ceased payment of the annual increment to its workmen due under the collective agreement after 31 December 1987. In consequence, the trade union complained to the Industrial Court against the employer for non-compliance with the terms of the collective agreement, pursuant to s 56 of the Industrial Relations Act 1967 ('the Act'). Pending the hearing of the complaint, the trade union wrote to the employer informing the latter that the former's letter of 15 October 1987 was to be treated as a notice terminating the collective agreement ('the notice'). The Industrial Court held that the notice had to be of three months' duration in order to effectively terminate the collective agreement, and as the three-month period only expired on 14 January 1988, the employer was obliged to pay all increments until that date ('the first award'). The employer, in purported compliance with the terms of the first award and the collective agreement, paid its workmen all increments that were due up to 14 January 1988, but thereafter ceased to make any further payment. The trade union was of the view that the employer was obliged to continue making payments of

A increments due, as the collective agreement continued to remain in
 force pending the making of a fresh agreement. They hence
 approached the Industrial Court once again for an interpretation of
 the first award, which in turn, called for an interpretation of the
 relevant provisions of the collective agreement. The trade union
 B relied heavily upon the decision of the (then) Supreme Court in
*General Ceramics Manufacturers Sdn Bhd v Non-Metallic Mineral
 Products Manufacturing Employees Union & Anor* [1988] 3 MLJ 474
 ('General Ceramics'). The employer, on the other hand, contended
 that the case was covered by the majority decision of the Supreme
 Court in *National Union of Hotel, Bar & Restaurant Workers v Casuarina
 Beach Hotel Sdn Bhd* [1986] 2 MLJ 17 ('Casuarina Hotel'). The
 C employer further submitted that as art 38(96) of the collective
 agreement was not to be construed as a continuation clause, the
 agreement did not survive its termination by the notice. The Industrial
 Court decided in favour of the trade union. Dissatisfied, the employer
 moved the High Court for certiorari to quash the second award. The
 D High Court acceded to the employer's application principally on the
 ground that the Industrial Court had chosen to apply the minority
 judgment instead of the majority views in *Casuarina Hotel*. The trade
 union appealed against the High Court decision.

E **Held**, allowing the appeal:

(1) *General Ceramics* and *Casuarina Hotel*, when properly read, did
 not lay down any rule of universal application. The point that set
 these two decisions apart concerned the construction of the
 particular agreement in each case. The agreement in *General
 F Ceramics* was one that was intended by the parties to continue
 until another agreement had been entered into, whilst in *Casuarina
 Hotel*, the agreement was intended by the parties not to continue
 after its termination (see pp 473I and 474A).

(2) Accordingly, the question that lies at the heart of this appeal was
 one of pure construction. What called for resolution was the
 question whether the parties, objectively speaking, intended that
 the collective agreement should continue in existence until a
 fresh agreement was negotiated. That intention was to be
 G ascertained from the language employed by the parties in the
 agreement (see p 474H).

(3) However, it is important to bear in mind that the ordinary rules
 of construction, whose assistance courts often pray in aid to
 determine contractual intention, do not apply when interpreting
 a collective agreement. An application of these rules will
 necessarily involve a rather strict and legalistic approach which is
 H to be avoided in a case such as the present (see p 474I).

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- (4) Also, due recognition should be accorded to the fact that a collective agreement is not a commercial document entered into between businessmen aided by legal advice. A collective agreement deals with far more basic issues that relate to the livelihood of workmen, and is often couched in rather loose language. A reasonable and pragmatic approach, shorn of an excess of legal learning, is therefore called for when construing a collective agreement, and in particular, any machinery that the workmen and their employer have established for the resolution of their differences (see p 475D-E); *Delhi Cloth Mills Co Ltd v Its Workmen* (1969) 2 LLJ 755 followed. A B
- (5) Articles 38(95) through (99) of the collective agreement provide the machinery by which the parties were to harmoniously negotiate the wages and other basic amenities of the workmen in the employ of the employer. The effect of these clauses may be summed up as follows: (i) the life of the collective agreement shall be three years from 1 January 1985 until 31 December 1987; (ii) if the union wished to negotiate a fresh agreement that would govern the benefits of the workmen after the aforesaid three-year period, it must give a three-month notice and forward its new proposals for the respondent's consideration; and (iii) until a new agreement had been concluded, the collective agreement was to remain in place in order to ensure that the workmen would not receive any lesser benefits than those already in existence (see p 476G-H). C D E
- (6) When viewed in this manner and reading arts 38(95) through (99) as a whole, this court was driven to the conclusion that the parties intended the collective agreement to remain in force until it was replaced by another agreement. And this was exactly the same conclusion that the Industrial Court arrived at (see pp 476I and 477A). F
- (7) The employer's argument that the trade union's notice had the effect of permanently terminating the collective agreement could not be accepted, as it would impale the trade union upon the horns of a dilemma. When arts 38(95) and (99) were read together, the trade union had to first terminate the agreement by giving to the employer a three-month notice in order to commence negotiations for a fresh agreement. Yet, by this very act, the trade union would have deprived its members of the benefits under the collective agreement (see p 477B-C). G H
- (8) To hold that the agreement did not continue despite the notice in question would render art 38(96), which was inserted by the parties to meet the very mischief which the employer suggested to be the true result, meaningless (see p 477D). I

A Per curiam:

Parliament, fully realizing that a just solution may not result in the field of industrial relations by the application of the rules of interpretation that operate in the environment of the common law, has enacted s 30(5) of the Act, which reads as follows, 'The Court shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form.' (see p 475B-C).

[Bahasa Malaysia summary]

- C** Perayu merupakan sebuah kesatuan sekerja berdaftar dan ahli-ahlinya terlibat dalam industri pembalakan ('kesatuan sekerja tersebut'). Penentang adalah sebuah syarikat sendirian berhad yang menggaji sejumlah besar ahli kesatuan sekerja tersebut ('majikan tersebut'). Dalam tahun 1985, kesatuan sekerja tersebut dan majikan tersebut telah mengikat suatu perjanjian kolektif ('perjanjian kolektif tersebut').
- D** Menurut perkara 38(95), adalah diperuntukkan bahawa perjanjian kolektif tersebut 'harus kekal berkuatkuasa bagi tempoh selama tiga tahun dari 1 Januari 1985 dan terus berkuatkuasa melainkan ditamatkan oleh notis bertulis tiga bulan yang diberikan oleh suatu pihak kepada pihak yang satu lagi ...'. Perkara 38(96) selanjutnya menyatakan bahawa perjanjian kolektif tersebut, walau bagaimanapun,
- E** harus 'terus berkuatkuasa sehingga suatu perjanjian kolektif yang baru berkuatkuasa sehingga tamatnya tempoh ini'. Pada 15 Oktober 1987, kesatuan sekerja tersebut menulis kepada majikan tersebut, dan menarik perhatian majikan kepada fakta bahawa perjanjian kolektif tersebut dijadualkan tamat pada 31 Disember 1987, dan mengemukakan cadangan untuk suatu perjanjian baru. Majikan tersebut tidak menjawab, tetapi telah memberhentikan bayaran kenaikan tahunan yang harus dibayar di bawah perjanjian kolektif tersebut kepada pekerja-pekerjanya selepas 31 Disember 1987. Akibatnya, kesatuan sekerja tersebut mengadu kepada Mahkamah Perusahaan terhadap majikan tersebut atas ketidakpatuhan terma perjanjian kolektif tersebut, menurut s 56 Akta Perhubungan Perindustrian 1967 ('Akta tersebut'). Sementara menunggu pembicaraan aduan itu, kesatuan sekerja tersebut telah menulis kepada majikan tersebut dan memberitahunya surat majikan bertarikh 15 Oktober 1987 harus dianggap sebagai notis yang memberhentikan perjanjian kolektif tersebut ('notis tersebut'). Mahkamah Perusahaan membuat keputusan bahawa notis selama tiga bulan hendaklah diberi bagi memberhentikan perjanjian kolektif tersebut secara berkesan, dan oleh kerana jangka masa tiga bulan hanya tamat pada 14 Januari 1988, majikan tersebut bertanggungjawab membayar semua kenaikan sehingga tarikh itu ('award pertama'). Majikan tersebut, seolah-olah mematuhi terma award pertama dan perjanjian kolektif tersebut, telah membayar pekerja-pekerja semua kenaikan yang harus dibayar
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sehingga 14 Januari 1988, tetapi tidak membuat sebarang bayaran lanjutan selepas itu. Kesatuan sekerja tersebut berpandangan bahawa majikan tersebut bertanggungjawab untuk terus membuat bayaran kenaikan yang harus dibayar, oleh kerana perjanjian kolektif kekal berkuatkuasa sementara menunggu pembuatan perjanjian baru. Dengan itu, sekali lagi mereka memohon kepada Mahkamah Perusahaan untuk suatu tafsiran atas award pertama, yang pula memerlukan tafsiran atas peruntukan relevan perjanjian kolektif tersebut. Kesatuan sekerja tersebut bergantung kepada keputusan Mahkamah Agung (pada masa itu) dalam *General Ceramics Manufacturers Sdn Bhd v Non-Metallic Mineral Products Manufacturing Employees Union & Anor* [1988] 3 MLJ 474 ('*General Ceramics*'). Sebaliknya, majikan tersebut berhujah bahawa kes ini diliputi oleh keputusan majoriti Mahkamah Agung dalam *National Union of Hotel, Bar & Restaurant Workers v Casuarina Beach Hotel Sdn Bhd* [1986] 2 MLJ 17 ('*Casuarina Hotel*'). Majikan tersebut selanjutnya berhujah bahawa oleh kerana perkara 38(96) perjanjian kolektif tersebut tidak patut ditafsirkan sebagai suatu fasal berterusan, perjanjian itu tidak terselamat daripada penamatannya melalui notis tersebut. Mahkamah Perusahaan membuat keputusan yang memihak kepada kesatuan sekerja tersebut. Majikan tidak berpuas hati dan memohon certiorari bagi membatalkan award kedua daripada Mahkamah Tinggi. Mahkamah Tinggi bersetuju kepada permohonan majikan tersebut, terutamanya atas alasan bahawa Mahkamah Perusahaan telah memilih untuk memakai penghakiman minoriti dan bukan pandangan majoriti dalam *Casuarina Hotel*. Kesatuan sekerja tersebut merayu terhadap keputusan Mahkamah Tinggi.

Diputuskan, membenarkan rayuan:

- (1) Apabila dibaca dengan betul, *General Ceramics* dan *Casuarina Hotel* tidak menetapkan sebarang rukun untuk dipakai sejagat. Ciri yang membezakan kedua-dua keputusan ini berkaitan dengan tafsiran perjanjian tertentu dalam setiap kes. Perjanjian dalam *General Ceramics* merupakan perjanjian yang diinginkan oleh pihak-pihak untuk berterusan sehingga perjanjian yang lain diikat, sementara dalam *Casuarina Hotel*, perjanjian adalah diinginkan oleh pihak-pihak untuk tidak berterusan selepas penamatannya (lihat ms 473I dan 474A).
- (2) Lantaran itu, soalan utama rayuan ini adalah berkenaan dengan tafsiran semata-mata. Apa yang perlu diselesaikan adalah soalan sama ada atau tidak pihak-pihak, dalam ertikata objektif, bertujuan untuk perjanjian kolektif tersebut terus wujud sehingga suatu perjanjian baru dirundingkan. Tujuan itu haruslah ditentukan daripada bahasa yang digunakan oleh pihak-pihak dalam perjanjian tersebut (lihat ms 474H).

- A (3) Namun demikian, adalah mustahak untuk mengingatkan bahawa rukun tafsiran yang biasa, yang sering kali digunakan oleh mahkamah bagi menentukan tujuan kontraktual, tidak terpakai ketika mentafsir suatu perjanjian kolektif. Pemakaian rukun-rukun ini akan membabitkan pendekatan yang agak ketat dan bersifat keundangan yang patut dielakkan dalam kes seperti kes ini (lihat ms 474I).
- B (4) Tambahan pula, pengiktirafan harus diberikan kepada fakta bahawa suatu perjanjian kolektif bukanlah suatu dokumen perdagangan yang diikat antara ahli perniagaan dengan bantuan nasihat undang-undang. Suatu perjanjian kolektif membincangkan isu yang jauh lebih asas yang berhubung dengan mata pencarian pekerja-pekerja, dan biasanya diselimuti dalam bahasa yang longgar. Pendekatan yang munasabah dan pragmatik, tanpa kelebihan pengetahuan undang-undang, diperlukan ketika mentafsir suatu perjanjian kolektif, dan khususnya, mana-mana mekanisme yang telah diwujudkan oleh majikan dan pekerja-pekerja bagi menyelesaikan perbezaan mereka (lihat ms 475D-E); *Delhi Cloth Mills Co Ltd v Its Workmen* (1969) 2 LLJ 755 diikuti.
- C (5) Perkara 38(95) hingga (99) perjanjian kolektif tersebut memperuntukkan mekanisme yang boleh digunakan oleh pihak-pihak untuk berunding secara harmoni atas gaji dan kemudahan asas pekerja-pekerja yang lain dalam penggajian majikan. Kesan fasal-fasal ini boleh diringkaskan seperti berikut: (i) riwayat perjanjian kolektif adalah untuk tiga tahun bermula dari 1 Januari 1985 sehingga 31 Disember 1987; (ii) jika kesatuan ingin merundingkan suatu perjanjian baru yang akan menguasai manfaat pekerja-pekerja selepas jangkamasa tiga tahun tersebut, ia mesti memberikan notis tiga bulan dan mengemukakan cadangan barunya untuk pertimbangan penentang; dan (iii) sehingga suatu perjanjian baru diikat, perjanjian kolektif tersebut harus dibiarkan bagi menjamin agar pekerja-pekerja tidak menerima sebarang manfaat yang kurang daripada apa yang sudah pun wujud (lihat ms 476G-H).
- D (6) Apabila dilihat dalam cara ini dan dengan membaca perkara 38(95) hingga (99) secara keseluruhan, mahkamah ini membuat kesimpulan bahawa pihak-pihak bertujuan untuk perjanjian kolektif tersebut kekal berkuatkuasa sehingga digantikan oleh perjanjian lain. Dan ini dengan tepatnya merupakan kesimpulan sama yang dibuat oleh Mahkamah Perusahaan (lihat ms 476I dan 477A).
- E (7) Hujah majikan bahawa notis kesatuan sekerja tersebut mempunyai kesan menamatkan perjanjian kolektif selama-lamanya tidak boleh diterima, oleh kerana ia akan meletak kesatuan sekerja tersebut
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dalam keadaan serba salah. Apabila perkara 38(95) dan (99) dibaca bersama, kesatuan sekerja tersebut harus pertama sekali menamatkan perjanjian itu dengan memberi notis tiga bulan kepada majikan supaya perundingan untuk perjanjian baru dapat dimulakan. Namun begitu, melalui tindakan ini, ahli-ahli kesatuan sekerja tersebut akan dilucutkan manfaat di bawah perjanjian kolektif tersebut (lihat ms 477B-C).

- (8) Untuk membuat keputusan bahawa perjanjian itu tidak berterusan meskipun terdapatnya notis yang berkenaan akan menjadikan perkara 38(96), yang dimasukkan oleh pihak-pihak bagi mencegah khianat yang dicadangkan oleh majikan adalah keputusan sebenar, tidak bermakna (lihat ms 477D).

Per curiam:

Parlimen sedar sepenuhnya bahawa penyelesaian yang adil tidak mungkin wujud dalam bidang perhubungan perindustrian melalui pemakaian rukun tafsiran yang beroperasi dalam bidang common law, dan telah menggubal s 30(5) Akta tersebut, yang dibaca seperti berikut, 'Mahkamah hendaklah bertindak mengikut ekuiti, perasaan hati yang baik dan merit kes yang substantial tanpa memikirkan kepada perkara-perkara teknikal dan berbentuk undang-undang' (lihat ms 475B-C).]

Notes

For cases on collective agreement, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 610-611.

Cases referred to

Delhi Cloth Mills Co Ltd v Its Workmen (1969) 2 LLJ 755

General Ceramics Manufacturers Sdn Bhd v Non-Metallic Mineral Products Manufacturing Employees Union & Anor [1988] 3 MLJ 474

Life Insurance Corp of India v Df Bahadur & Ors AIR 1980 SC 2181

National Union of Hotel, Bar & Restaurant Workers v Casuarina Beach Hotel Sdn Bhd [1986] 2 MLJ 17

Legislation referred to

Industrial Relations Act 1967 ss 30(5), 56

Appeal from: Originating Motion No R2-25-105-1991 (High Court, Kuala Lumpur)

P Kuppusamy (*P Kuppusamy & Co*) for the appellant.

N Sivabalah (*Shearn Delamore & Co*) for the respondent.

- A **Gopal Sri Ram JCA** (delivering the judgment of the court): This is an appeal against the decision of the High Court quashing, by the issue of certiorari, an award of the Industrial Court ('the second award') interpreting an earlier award ('the first award') by that court. When, at the conclusion of arguments before us, we allowed the appeal, we indicated to counsel that reasons for our decision would be given in due course. These now follow.

The appellant is a registered trade union whose members are engaged in the timber industry. The respondent is a private limited company that employs a number of the appellant's members. In 1985, the appellant and the respondent entered into a collective agreement ('the collective agreement'), cl 38(95)–38(99) of which read as follows:

ARTICLE 38: DURATION AND TERMINATION

- 95 This agreement shall remain in force for a period of three years from 1 January 1985 and continue to be in force unless terminated by three months notice in writing given by either party to the other party on or after 1 October 1987.
- 96 However, this agreement shall continue to be in force until a new collective agreement comes into effect even after expiry of this period.
- 97 During the currency of this agreement, neither party shall seek to vary, modify, annul or add to any of its terms in any way whatsoever save by operation of law or mutual agreement.
- 98 In the event both parties agree to vary any of the terms of the agreement, both parties shall jointly deposit such variation of the terms of agreement with the Industrial Court for its cognizance within one month from the date of agreement on the said variation.
- 99 In respect of para 95, the party that gives such notice shall also submit proposal on terms and conditions for negotiation. In the event of deadlock being reached in negotiation for a new agreement, the matter shall be referred to the Industrial Relations Department, for conciliation and, if necessary to arbitration by the Industrial Court in accordance with the provisions of the Industrial Relations Act 1967.
- Thus, the collective agreement was, in the first instance, to be for a period of three years from 1 January 1985 until 31 December 1987. As the collective agreement approached its stipulated expiry date, the appellant evinced an intention to negotiate a fresh agreement with the respondent. For this purpose, it wrote to the respondent on 15 October 1987, drawing the latter's attention to the fact that the collective agreement was scheduled to expire on 31 December 1987 and forwarding proposals for a fresh agreement. From the record provided, it appears that the respondent did not reply this letter.

Meanwhile, 31 December 1987 passed whereupon the respondent ceased payment of the annual increment to its workmen due under the collective agreement. In consequence, the appellant, on 18 July 1988,

pursuant to the provisions of s 56 of the Industrial Relations Act 1967 ('the Act'), complained to the Industrial Court against the respondent for non-compliance with the terms of the collective agreement. Pending the hearing of the aforesaid complaint, the appellant, on 30 August 1988, wrote to the respondent informing the latter that the former's letter of 15 October 1987 was to be treated as a notice terminating the collective agreement. A B

On 27 September 1988, the learned chairman of the Industrial Court handed down the first award. By a process of reasoning — the logic of which remains unclear — he held that the notice of 15 October 1987, in order to effectively terminate the collective agreement, had to be of three months' duration. He went on to hold that the three-month period only expired on 14 January 1988, and that the respondent was accordingly obliged to pay all increments until that date. C

The respondent, in purported compliance with the terms of the first award and the collective agreement, paid its workmen all increments that were due up to 14 January 1988, but thereafter ceased to make any further payment. The rather disingenuous argument of the respondent for this cessation was that the collective agreement had been effectively terminated; until a fresh agreement was entered into, there was no obligation to make any payment. D

By reason of the respondent's stand, the appellant, on 30 May 1990, once again approached the Industrial Court for an interpretation of the first award, which, in turn, called for an interpretation of the relevant provisions of the collective agreement. E

Before the Industrial Court, the appellant — in support of its argument that the workmen's benefits under the collective agreement survived until a fresh agreement had been negotiated to conclusion — relied heavily upon the decision of the (then) Supreme Court in *General Ceramics Manufacturers Sdn Bhd v Non-Metallic Mineral Products Manufacturing Employees Union & Anor* [1988] 3 MLJ 474. The respondent's answer to this argument was that the case was covered by the majority decision of the Supreme Court in *National Union of Hotel, Bar & Restaurant Workers v Casuarina Beach Hotel Sdn Bhd* [1986] 2 MLJ 17. F G

The Industrial Court handed down the second award on 11 July 1991. It held that despite the notice of 15 October 1987, the collective agreement continued to remain in force pending the making of a fresh agreement. The reasoning for its decision appears sufficiently from the following passages (at pp 6 and 7 of the second award): H

The issue before us is whether the annual increment, which becomes due and payable to the workers on 1 January 1988, will continue to be paid after the termination of the 1985 agreement. The union contended that they ought to be continued. The company, on the other hand, contended that it could withdraw it, as the 1985 agreement was terminated and there was no I

A other collective agreement governing the payment of annual increment. In short, it questions the effect of the collective agreement when it is legally terminated by notice.

B Termination of a collective agreement by either party does not have the effect of extinguishing the rights flowing therefrom. The effect of termination of a collective agreement is only to prevent thereafter the enforcement of the obligations under it in the manner prescribed, but the rights and obligations which flow from it are not wiped out. It is therefore our view that the annual increment which has become due and payable to the employees in January 1988 will continue to be paid even after the expiry date of the collective agreement on 14 January 1988, for:

C 'The termination does not by itself abrogate the terms of the existing agreement. The terms of the agreement continued to have effect until a new collective agreement was reached': per Hashim Yeop A Sani SCJ (as he then was) in *Casuarina Beach Hotel's case* (*National Union of Hotel, Bar & Restaurant Workers v Casuarina Beach Hotel Sdn Bhd* [1986] 2 MLJ 17 at p 25).

D This, of course, meant that the respondent was obliged to continue making payments of increments already due under the collective agreement. The respondent, being dissatisfied with this result, moved the High Court for certiorari to quash the second award. The High Court acceded to the respondent's application principally on the ground that the Industrial Court had taken into account an irrelevant matter; namely, that it had
E chosen to apply the minority judgment of Hashim Yeop A Sani SCJ in *National Union of Hotel, Bar & Restaurant Workers v Casuarina Beach Hotel Sdn Bhd*, instead of applying the views expressed by the majority in that case.

F Before us, Mr Kuppusamy of counsel for the appellant argued that the Industrial Court had committed no error of law warranting interference by certiorari. Because we formed the preliminary view that the appeal had merit, we stopped Mr Kuppusamy midstream during his submissions and called upon Mr Sivabalah of counsel for the respondent to support the judgment of the High Court.

G Mr Sivabalah submitted that the Industrial Court was wrong in applying the dissent of Hashim Yeop A Sani SCJ in *Casuarina Hotel's case*, and for that reason, the second award was rightly quashed by the High Court. Counsel also submitted that the collective agreement, on its proper construction, did not survive its termination by the appellant's letter of 15 October 1987. According to Mr Sivabalah, art 38(96) was not a continuation
H clause, and was not to be construed as such.

I We are of the view that a discussion as to whether what was said in *General Ceramics* or by the majority in *Casuarina Hotel* is to be applied to the present case would be an academic exercise. These two cases, when properly read, do not lay down any rule of universal application: they deal with particular fact patterns that presented themselves for curial resolution.

The point that sets these two decisions apart concerns the construction of the particular agreement in each case.

The agreement in *General Ceramics* was, on its true interpretation, one that was intended by the parties to continue until another agreement had been entered into. On the other hand, the agreement in *Casuarina Hotel* was, on its proper construction, intended by the parties in that case not to continue after its termination. This is borne out by the following passage in the judgment of Mohamed Azmi SCJ (now FCJ) in *General Ceramics Manufacturers Sdn Bhd v Non-Metallic Mineral Products Manufacturing Employees Union & Anor* [1988] 3 MLJ 474, at p 476 of the report:

Secondly, the argument of the company is that since the 1982 collective agreement had expired on 29 February 1984, the Industrial Court would have no jurisdiction to order compliance with any of its terms under s 56 (of the Industrial Relations Act 1967). Reference was made to the majority decision of this court in *National Union of Hotel, Bar & Restaurant Workers v Casuarina Beach Hotel Sdn Bhd* [1986] 2 MLJ 17. In that case the complaint under s 56 was for non-compliance with the terms of the terminated collective agreement in respect of 5% additional contribution by the company over and above the statutory rates prescribed by the Employees Provident Fund Act, during the period of re-negotiation with a view to entering a new collective agreement, ie accruing after termination of the agreement. In the absence of a saving or continuation clause, it was held by this court that once a collective agreement had been terminated in accordance with its terms, it ceased to have a binding effect on the parties. It was in this context that the court stated that:

‘... it is inherent in s 56(1) that the complaint to the Industrial Court for non-compliance can only be made during the currency of the collective agreement and not after its termination’.

This statement should not be read out of context to mean that the complaint cannot be made for non-compliance after the expiry of the agreement of a right which has accrued during the currency of the agreement. It is obvious that where a right has accrued and a claim is payable during the currency of the agreement, such a claim cannot be disbarred merely because the agreement has expired or been terminated. In the present case, if the right to the 1984 annual increment could be shown to have accrued during the currency of the 1982 agreement, the application for non-compliance would certainly be valid even if the claim itself was made after its expiry.

Accordingly, in our judgment, the question that lies at the heart of this appeal is one of pure construction. What calls for resolution is the question whether the parties, objectively speaking, intended that the collective agreement should continue in existence until a fresh agreement was negotiated. That intention is, of course, to be ascertained from the language employed by the parties in the collective agreement. However, before embarking upon that exercise, it is important for us to bear in mind two broad and general matters that govern the approach that is to be adopted

A when interpreting a document such as that which has fallen for construction in the present case.

First, it is important to bear in mind that the ordinary rules of construction — whose assistance courts often pray in aid to determine contractual intention — do not apply when interpreting a collective agreement. An application of these rules will necessarily involve a rather strict and legalistic approach which is to be avoided in a case such as the present. Parliament, fully realizing that a just solution may not result in the field of industrial relations by the application of the rules of interpretation that operate in the environment of the common law, has enacted s 30(5) of the Act, which reads as follows:

C The Court shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form.

Secondly, due recognition should be accorded to the fact that a collective agreement is not a commercial document entered into between businessmen aided by legal advice. A collective agreement deals with far more basic issues that relate to the livelihood of workmen, such as their wages and other rudimentary benefits that are essential for sustaining life. It will therefore be unsurprising to find such agreements couched in rather loose language, often lacking the degree of precision with which lawyers are familiar. A reasonable and pragmatic approach, shorn of an excess of legal learning, is therefore called for when construing a collective agreement, and in particular, any machinery that the workmen and their employer have established for the resolution of their differences.

We may add that we find much support for the view we take of the matter — in particular, the broad and liberal approach that is to be adopted to the construction of collective agreements — from the following passages in the judgment of Shah J in *Delhi Cloth Mills Co Ltd v Its Workmen* (1969) 2 LLJ 755 at pp 767 and 768:

We consider it right to observe that in adjudication of industrial disputes settled legal principles have little play: the awards made are often the result of *ad hoc* determination of disputed questions, and each determination forms a precedent for determination of other disputes. An attempt to search for principle from the law built up on those precedents is a futile exercise. To the courts accustomed to apply settled principles to facts determined by the application of the judicial process, an essay into the unsurveyed expanses of the law of industrial relations with neither a compass nor a guide, but only the pillars of precedents is a disheartening experience. The Constitution (and, in Malaysia, Parliament) has, however, invested this court with power to sit in appeal over the awards of industrial tribunals which are, it is said, founded on the somewhat hazy background of maintenance of industrial peace, which secures the prosperity of the industry and improvement of the conditions of workmen employed in the industry, and in the absence of principles precedents may have to be adopted as guides — somewhat reluctantly — to secure some reasonable degree of uniformity or harmony in the process.

But in the branch of law relating to industrial relations, the temptation to be crusaders instead of adjudicators must be firmly resisted. It would not be out of place to remember the statement of the law made in a different context but nonetheless appropriate here — by Douglas J of the Supreme Court of the United States in *United Steel Workers of America v Enterprise Wheel & Car Corp* [(1960) 363 US 593]:

‘... as arbitrator ... does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator’s words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the awards.’

We may at once state that we are not for a moment suggesting that the law of industrial relations developed in our country has proceeded on lines parallel to the direction of the law in the United States.

...

We may repeat that in matters relating to the grant of gratuity and even generally in the settlement of disputes arising out of industrial relations, there are no fixed principles, on the application of which the problems arising before the tribunals or the courts may be determined; and often precedents of cases determined ad hoc are utilized to build up claims or to resist them. It would, in the circumstances, be futile to attempt to reduce the grounds of the decisions given by the industrial tribunals, the Labour Appellate Tribunal and the High Courts to the dimensions of any recognized principle.

It is with these matters in mind that we approach the inquiry whether the Industrial Court placed an erroneous interpretation on the first award and the collective agreement. And having done so, we are, with respect, unable to detect any error in the reasoning of the Industrial Court in the second award.

In our judgment, arts 38(95) through (99) provide the machinery by which the parties were to harmoniously negotiate the wages and other basic amenities of the workmen in the employ of the respondent. The effect of these clauses may, we think, be summed up as follows:

- (1) the life of the collective agreement shall be three years from 1 January 1985 until 31 December 1987;
- (2) if the union wished to negotiate a fresh agreement that would govern the benefits of the workmen after the aforesaid three-year period, it must give a three-month notice and forward its new proposals for the respondent’s consideration; and
- (3) until a new agreement had been concluded, the collective agreement was to remain in place in order to ensure that the workmen would not receive any lesser benefits than those already in existence.

When viewed in this manner and reading arts 38(95) through (99) as a whole, we are driven to the conclusion that the parties intended the collective agreement to remain in force until it was replaced by another

A agreement. And this is exactly the same conclusion that the Industrial Court arrived at.

With respect, we are unable to accept the respondent's argument that the appellant's notice dated 15 October 1987 had the effect of permanently terminating the collective agreement. The suggested
B construction of the relevant terms of the collective agreement would impale the appellant upon the horns of a dilemma. When arts 38(95) and (99) are read together — as indeed they ought to be — the appellant, in order to commence negotiations for a fresh agreement, had to first terminate the collective agreement by giving to the respondent a three-month notice. Yet, by this very act, the appellant would have wrought havoc upon its
C members in the respondent's employment by depriving them of the benefits under the collective agreement.

The illogical and unjust result that would be brought about by an acceptance of the respondent's argument sufficiently demonstrates its fallacy. To hold that the collective agreement does not continue despite
D the notice in question would, in our judgment, render art 38(96) of the collective agreement meaningless. That article was, no doubt, inserted by the parties to meet the very mischief which the respondent suggested to be the true result.

In *Life Insurance Corp of India v Df Bahadur & Ors* AIR 1980 SC
E 2181 at p 2198, Krishna Iyer J, when speaking for the majority, repulsed a not altogether dissimilar argument to that advanced by the respondent before us in the following words:

It is inconceivable that any other alternative subsists. For instance, imagine a case where for 30 years an award or settlement might have given various
F benefits to employees and at the end of 30 years, a notice terminating the settlement were given by the employer. Does industrial law absurdly condemn the parties to a reversion to what prevailed between them 30 years ago? If the employees were given Rs100 as salary in 1947, and thereafter, by awards and settlements the salary scale was raised to Rs1000 could it be the
G management might, by unilateral yet disastrous action, give notice under s 19(2) or (6) terminating the settlement or award, tell the workers that they would be paid Rs100 — which was the original contract, although in law that contract had been extinguished totally by a later contract of settlement or by force of an award? The horrendous consequences of such an interpretation may best be left to imagination. Moreover, if industrial peace is the signature tune of industrial law, industrial violence would be the
H vicious shower of consequences if parties were relegated either to an ancient and obsolete contract or to a state of lawless hiatus.

Although the context in which these words were uttered may differ from the present, we find the reasoning therein contained to support the view we take of the matter.

I Left unpersuaded by Mr Sivabalah's arguments, we were, at the close of his submissions, convinced that the preliminary view we had earlier formed of the matter was indeed correct.

Accordingly, the appeal was allowed and the respondent was ordered to bear the costs of the appeal and of the proceedings in the court below. The orders made by the High Court were set aside and the second award was restored. The deposit paid into court by the appellant as security was ordered to be refunded to it.

Order accordingly.

Reported by Isabel Liong

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